



U.S. Small Business
Administration



U.S. Small Business
Administration

SBA's Small Business Learning Series

Market Research

Not intended for public distribution

Hosts

**Darryl Williams, Procurement Center Representative
SBA Office of Government Contracting,
Area IV, Warren, MI**

**David S. Diercks
Procurement Center Representative (PCR)
Office of Government Contracting, Area IV**

Welcome to “SBA Virtual Learning 2024”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact your IT admin who manages Teams settings for your organization.
3. Captioning available for this presentation.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

The APEX Accelerator Program

The APEX Accelerators are a vital resource partner.

- The APEX Accelerators posts past “First Wednesday” programming at this link: <http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting Officer Resources: “How APEX Accelerators partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest APEX Accelerators/Procurement Technical Assistance Center at <http://www.aptac-us.org>
- APEX Accelerator Information at <https://www.apexaccelerators.us/#/>

Small Business Administration YouTube Page

SBA YouTube page posts past “First Wednesday” programming at links below.

FY2023

- October 5, 2022 – 8(a) Business Development Program Updates: <https://youtu.be/Yl5Sp0dP1aE>
- November 2, 2022 – Surety Bond Guarantee Program: <https://youtu.be/QlZJiMLcc5o>
- December 7, 2022 – Subcontracting Program: <https://youtu.be/gMaaeGl8CBs>
- January 4, 2023 – Surveillance Review Program: <https://youtu.be/euUX4Jv6kRI>
- February 1, 2023 – HUBZone Program: <https://youtu.be/YGnS8e6idCc>
- March 1, 2023 – The Mentor Protégé Program: <https://youtu.be/A9KbCm4FP1c>
- April 5, 2023 – Non-Manufacture Rule (NMR): <https://youtu.be/AqwYMWoe9f0>
- May 3, 2023 – Size Program: https://youtu.be/45WZ_oPb1GY
- Jun 7, 2023 – Legislature and Regulatory Updates: <https://youtu.be/ljx9IajQJNY>
- July 5, 2023 – Market Research: [SBA First Wednesday Market Research - July 13, 2023](https://youtu.be/45WZ_oPb1GY)
- August 2, 2023 – Service-Disabled Veteran Owned Program (SDVOSB): <https://youtu.be/QxcxJISRhnw>

FY2024

- October 4, 2023 - Certificate Of Competency: <https://youtu.be/VDZ-uuCLlWw>
- November 1, 2023 - 8(a) Program Updates: <https://youtu.be/6fN3dK0EShs>
- December 6, 2023: <https://youtu.be/sa29iONBtfk>
- January 3, 2024 - Compliance Reviews: https://youtu.be/WmZn_oa13-o
- February 7, 2024 - Limitations on Subcontracting: <https://youtu.be/fYtGi6zhjXM>
- March 6, 2024 – Mentor Protégé Program: <https://youtu.be/ULmCzTe4c04>
- April 3, 2024 – Women-Owned Small Business Program: <https://youtu.be/E-R17-5lBn4>
- *May 9, 2024 - Participation Plans & Subcontracting Plans: <https://youtu.be/6OBLwxqdoZM>
- June 5, 2024 – Legislative and Regulatory Update: <https://youtu.be/iajaPOhtgHI>
- July 11, 2024 – HUBZone: <https://youtu.be/MJ9iL8dT0mk>
- August 7, 2024 – Market Research:

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

FY 2024 SCHEDULE

1:00 to 2:00 PM Central Time

FY 2024	Date	Topic
1	October 4, 2023	COC
2	November 1, 2023	8(a) Program Updates
3	December 6, 2023	The Timber Program and SBA POCs
4	January 3, 2024	Compliance Reviews
5	February 7, 2024	Limitations on Subcontracting
6	March 6, 2024	SBA Mentor Protégé Program and Joint Ventures
7	April 3, 2024	Women Owned Small Business (WOSB)
8	*May 9, 2024	Participation Plans versus Subcontracting Plans
9	June 5, 2024	Legislative Updates
10	*July 11, 2024	HUBZone
11	August 7, 2024	Market Research

* Schedule Revision Due to Holiday or Programming Conflict

The program schedule is for information only and is subject to change.

One Continuous Learning Point

- Self-service process for one CLP of credit: Many of you want to receive credit for today's training. You will be glad to know that today's training is worth one CLP. The slide presentation will include the training certificate on Slide 9. Fill, download the training certificate, copy and submit it through regular channels.
- If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

“SBA 1st Wednesday Virtual Learning 2024”

This Certificate is awarded to

Insert Your Name Here

For completion of

Market Research

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Pamela J. Beavers
Director, Area IV
SBA Office of Government Contracting

08/07/2024

DATE

Today's Speakers

Mr. Nauman A. Ansari
Senior Procurement Executive
Office of the Chief Acquisition Officer
Office of Performance, Planning, and the
Chief Financial Officer



U.S. Small Business
Administration



U.S. Small Business
Administration

Market Research

Driving the Acquisition Strategy

August 2024

Presented by Nauman Ansari
SBA Senior Procurement Executive

Agenda

- Acquisition Process
- Market Research (MR) Introduction
- When is MR Required?
- Who is Responsible for MR?
- What are some MR Methods?
- How is MR Documented?
- MR and Small Business
- GAO Case
- Tolliver Case
- Practical Suggestions
- Discussion / Q&A

What is an Acquisition?

An Acquisition is a strategic, collective effort by which the SBA obtains supplies and services from another party via a contract. It begins with the identification of a need, which is further developed into a requirement addressed through a contract. It also includes strategic management of how new capabilities and their requirements are generated, how the agency contributes to the annual budget and allocates resources, and how projects, programs, and contracts are governed and executed.

Acquisition encompasses both the contracting and procurement processes

Contracting involves creating formal documentation to obtain supplies or services from non-federal sources. Contracts include a description of supplies and services required, solicitation and selection of sources, preparation and award of contracts, and all phases of contract administration.

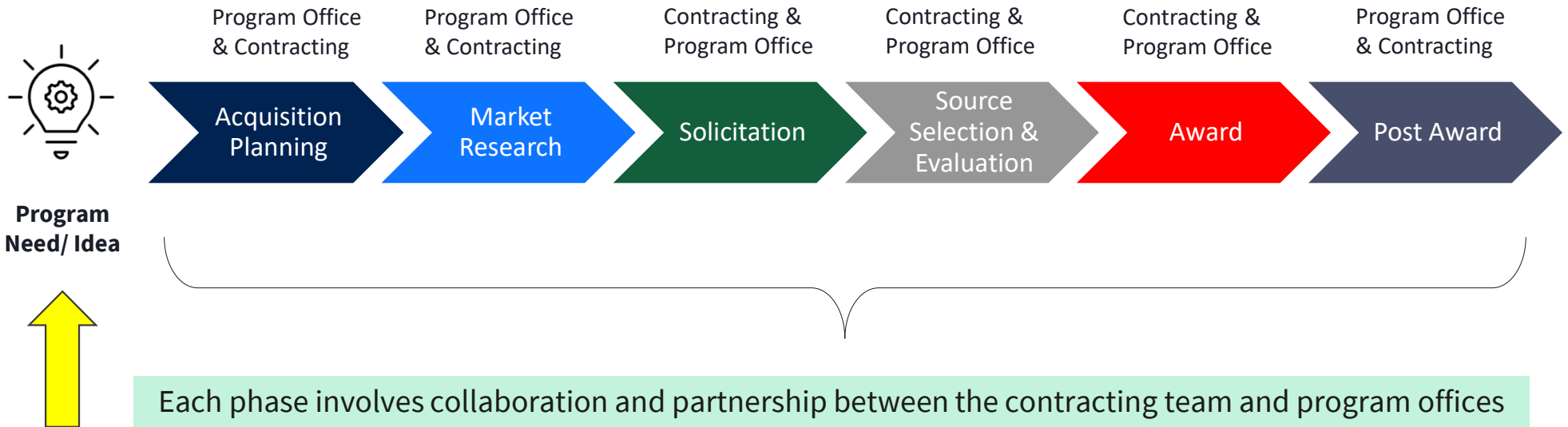
Procurement refers to the process of buying goods and services. It is often used interchangeably with acquisition but does not include the overarching strategic management tied to acquisition. Contracting is one method of procuring.

Who's Who on the Acquisition Team?

- **Chief Acquisition Officer (CAO)** – ensures that the SBA's mission is achieved through strategic management of the agency's acquisition activities.
- **Senior Procurement Executive (SPE)** - oversees the exercise of acquisition authority within the SBA and further delegates specific written acquisition authority to Contracting Officers through the issuance of contracting warrants.
- **Contracting Officers** have been delegated the authority to execute, modify, or terminate a contract.
- **Contracting Officer Representatives** are appointed by Contracting Officers and delegated limited authority for monitoring contractor performance, alerting Contracting Officers to problems, recommending any necessary contract changes, and inspecting and accepting deliverables.
- **Program managers** are responsible for the overall agency program, which includes project planning, organizing, staffing, leading, and executing assigned projects.
- **Project managers** are responsible for project management activities of one or more projects, to include defining project objectives, scope, cost and schedule; allocating project funding and authorizing work activities.

All Acquisition team members serve as business advisors to program offices

Acquisition Process Phases



Acquisition Planning & Market Research

Most overlooked process steps!



The Acquisition Planning and Market Research Phases lay the groundwork for soliciting offers and awarding a contract.

Opportunities for improved partnership

- Engaging with Industry
- Conducting market research
- Determining the extent of competition for potential award (e.g., full and open, non-competitive, small business set-aside, etc.)
- Establishing technical, price-related, and other evaluation criteria for competitive acquisitions.

Market Research Introduction

Defined and Outlined in the FAR

- Market research is defined in the Federal Acquisition Regulation (FAR) Part 2.101 as the process of “collecting and analyzing information about capabilities within the market to satisfy agency needs.”
- FAR Part 7.102 – Acquisition planning policy: (a) Agencies shall perform acquisition planning and conduct market research (FAR Part 10) for all acquisitions...
- FAR Part 10.001 – (a)(2) Conduct market research
- appropriate to the circumstances...
 - *(dollar value, complexity, one-time vs. repeated need)*

Market Research Introduction, continued...

- Although market research is outlined primarily in FAR Part 10, it is referenced throughout the FAR as a key basis for several acquisition decisions, including but not limited to:
 - Commerciality determination;
 - Competition or its limits;
 - **Viability of small business set-aside and type;**
 - **Subcontracting opportunities;**
 - Price reasonableness;
 - Contract type determination;
 - Appropriate contract provisions including rights in data;
 - Establishing a government cost or price estimate;
 - Determine the need for contract financing;
 - The availability of products that maximize the use of recovered materials and opportunities for the promotion of energy conservation and efficiency;
 - **If bundling is necessary and justified;** and
 - Availability of electronic and information technology that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board.

MR Example Acquisition Policy

Conducting Market Research.

- Market research must be conducted **prior to solicitation for all acquisitions**. The extent of market research will vary for each acquisition depending on such factors as estimated dollar value, complexity, urgency, and past experience. Although market research should be initiated by program office, it is the responsibility of the CO to determine the appropriateness of the market research conducted. The CO must ensure the information is properly documented and contained in the contract file.
- Information collected during market research **must be current, accurate and relevant to the requirement at hand**. In accordance with FAR subpart 10.002(b)(1), the CO may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant.

Documenting Market Research.

- Market research must be documented in writing for all acquisitions where the estimated value exceeds the simplified acquisition threshold (SAT), unless an exception applies. The SAT is defined under FAR subpart 2.101 – Definitions.

Exceptions.

- A MRR is not required for in scope modifications but see determination and findings requirements for option exercises (FAR 17.207).
- A MRR is not required for task/delivery orders and calls to be placed against SBA ordering vehicles (i.e., IDIQ or BPA) when language in the ordering vehicle MRR specifically states the MRR covers all task and/or delivery orders or calls within scope of the contract or agreement. When a MRR for an SBA ordering vehicle does not cover the task/delivery orders or calls, separate MRRs are required for the task/delivery orders or calls where the total value of the order is greater than the SAT.

When is MR Required

- As early in the acquisition process as practicable
- Before developing new requirements documents for an acquisition
- Before soliciting offers for procurements with an estimated value over the simplified acquisition threshold
- Before soliciting offers for procurements with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost
- Before soliciting offers for procurements that could lead to a bundled contract
- On an ongoing basis, and to take advantage to the maximum extent practicable of commercially available market research methods, to identify the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting agency requirements in furtherance of a contingency operation or defense against or recovery from a nuclear, biological, chemical, or radiological attack.

Who is Responsible for MR

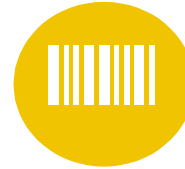
- Market research covers a broad range of information including technical, cost, and contractual information. It therefore requires a collective effort by an acquisition team. Team members may include, but are not limited to the following:
 - Contracting Officer
 - Program Manager
 - Small Business Specialist
 - SBA Procurement Center Representatives
 - Cost / Price Analyst
 - Technical Expert

Basically Everyone!!

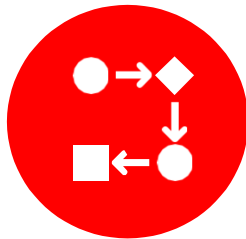
What is crucial in Market Research?



Given total estimated dollar value, are there SBs who can perform? Partial set aside appropriate? Is a subcontracting plan required?



Is the NAICS code correct? Can affect who you find and who sees the opportunity.



Does the Market Research Report adequately support the recommended strategy? Any gaps in the breadcrumb trail?



Were market research efforts *reasonable and sufficient*? Are there unique aspects of the requirement that affect SB participation?



If procured in the past, did SBs or socio-economic firms participate? **Conduct current market research** to check for new entrants or changes in size or socio-economic certifications.



Did the market research *adequately and fairly* consider SB firms?

MR Methods

- Can be grouped into two broad categories:
 - Internal
 - External
- No “perfect” number or mix of methods defined in the FAR.
- Complexity and scope of the requirement will drive which and how many methods to utilize.
- Two common forms of market research:
 - **Strategic** – Continuous efforts such as market surveillance (Program Office / SME / COR) -What solutions are available in the commercial sector?
 - **Tactical** – Requirement Specific (Contracting Officer / Contract Specialist) - which contracting vehicles/methods provide the best solution?

MR Methods

Internal

- Internal Market Research Methods
 - Reviewing the results of recent market research undertaken for similar or identical requirements
 - Contacting knowledgeable government officials on market capabilities to meet requirements, including obtaining source lists of similar items from other contracting activities or agencies
 - Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at <https://www.contractdirectory.gov/contractdirectory/> and other Government and commercial databases that provide information relevant to agency acquisitions
 - Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line
 - Reviewing prior acquisition history
 - Review Information on [Acquisition Gateway](#) including:
 - Best-in-Class Contract Vehicles
 - Prices Paid Portal
 - [Small Business Dynamic Search Engine!](#)

MR Methods

External

- External Market Research Methods
 - Contacting knowledgeable industry officials on market capabilities to meet requirements or obtaining source lists of similar items from trade associations or other sources
 - Conducting interchange meeting or holding pre-solicitation conferences to involve potential offerors early in the acquisition process
 - Publishing formal requests for information in appropriate technical or scientific journals or business publications
 - Participating in interactive, on-line communication among industry, acquisition personnel, and customers
 - Holding one-on-one meetings with industry
 - Publishing request for information or sources sought notices on SAM.gov
 - Attending trade fairs and conferences
 - Performing site visits (government staff visiting vendors or vendors visiting government)
 - Preparing a formal survey or questionnaire and sending it to multiple vendors
 - Sponsoring industry conferences or industry days

Federal Markets

- Two most common markets:
 - Open Market
 - Open Market contracting is any acquisition that exists outside of the Federal Supply Schedule program.
 - The acquisition procedures used to acquire products and services in the open market are generally FAR Parts 13, 14, & 15 as supplemented by or combined with other FAR Parts like 12, 35, 36, Etc...
 - Open market acquisitions are subject to FAR 19 (Small Business Programs) prescriptions and procedures during the market research and acquisition planning phase.
 - Closed Market - Federal Supply Schedule (FSS) and GWACS
 - FSS program is directed and managed by GSA and provides Federal agencies with a simplified process for obtaining commercial supplies and services at discounted prices associated with volume buying.
 - Use of FAR 19 is discretionary although SBA and other Agencies require consideration of set-asides even when utilizing FSS.
 - Vendors are locked into terms and conditions established by GSA.
 - Vendors may be restricted on use of partnerships or joint ventures.

**FULL &
OPEN**

SBSA

Partial SB
Set Aside

**WOSB or
EDWOSB
Set Aside**

**SDVOSB
SET ASIDE**

Other than
Full & Open

**HUBZONE
SET ASIDE**

Documenting Market Research

*8(a) Sole Source
or Competitive*

*WOSB/EDWOSB, HZ or
SDVOSB Sole Source*

FAR 10.002(e): *The head of the agency shall document the results of market research in a manner appropriate to the size and complexity of the acquisition*

Who is Responsible for Documenting MR

Example From an Agency Market Research Guide:

When market research must be documented in writing, CO's must use the Market Research Report Template (Attachment 1).

The breadth and scope of information and analysis provided within the MRR may vary depending on the estimated dollar value, complexity, urgency, and past experience of the requirement. However, the contents must be sufficient to support a reasonable basis for the acquisition strategy.

The MRR template contains all essential elements of properly documented market research. Although the elements listed in the template must not be deleted, the information within each element will vary and may be altered or deemed "N/A" based on the complexity and circumstances associated with the requirement.

The cognizant CO is responsible for the overall MRR even though much of the information in it may be obtained from market research efforts performed by other members of the acquisition team.

Market Research Report

- Recommendation for Agency Policy:
 - Require market research be documented in the form of a Market Research Report (MRR) on all acquisitions where the estimated value exceeds the SAT.
 - Contracting Officer ultimately decides on breath and depth of documentation within the report.
 - Collect the data and provide the analysis in this document.

Market Research Report, continued...

- A market research report (MRR) may serve as the primary document to establish the acquisition strategies' reasonableness. An MRR is required on all actions at or above \$250,000.
- The cognizant CO is responsible for the overall MRR even though much of the information in it may be obtained from market research efforts performed by other members of the acquisition team.

SMALL BUSINESS COORDINATION RECORDS

2579, 2689, 4220, 2268, 1787, 1886, 1205 – whatever your agency calls the document 😊

- Form required per agency policy for Agency Small Business Specialist review & approval
- Agency OSBP and SBA HQ have signed Business Operations Plans (BOPs) which provide detail on the agreed upon coordination process. (what types of actions are coordinated, often including dollar thresholds).
- The assigned PCR and specific Procurement Center (PC) may negotiate more detailed coordination processes. (check with your PC's Small Business Professional/Specialist/Liaison).
- **Full & Open below SAT, over SAT, SB over SAT all may require PCR review based on the BOP or local agreement between the PCR and PC.**

Particularly high dollar value, consolidation or bundling usually triggers Agency HQ-level review in addition to PCR review.

Market Research Report

Small Business Coordination Form

- The MRR should accompany the SBA Small Business Coordination Form.
- Should contain the following essential elements:
 - Who participated in market research
 - What methods were utilized
 - What analysis was performed
 - What is the conclusion based on the analysis performed

Market Research and Small Business

Approach Market Research as a Small Business Champion



- Assume that SBs can perform.
- Use CURRENT market research info along with
- Don't just repeat a past acquisition strategy without checking current conditions.
- Do not assume that "only LBs can do it"
- Make the research "small business friendly" (try related NAICS codes, include SBs who have done smaller or similar projects)
- Beat the bushes when possible. Email known sources or organizations that know potential sources (chambers, APEX Accelerators, other agencies at federal, state & local levels)



Market Research and Small Business

The Rule of Two



FAR 19.502-2(a): “Each acquisition... above the micro- purchase threshold, but not over the simplified acquisition threshold, shall be set aside for small business...” (currently \$10,000* and \$250,000)

FAR 19.502-2(b): “Before setting aside an acquisition under this paragraph (Total SB Set Asides) refer to 19.203(c). The contracting officer **shall set aside** any acquisition **over the simplified acquisition threshold for small business** participation when there is a reasonable expectation that:

(1) Offers will be obtained from at least two responsible small business concerns....; and

(2) Award will be made at fair market prices.



Market Research and Small Business

FAR Part 19

19.203: Relationship among small business programs

- (a) **No order of precedence** among the 8(a), HUBZone, SDVOSB or WOSB Programs.
- (b) Micropurchase threshold up to SAT: the requirement at [19.502-2\(a\)](#) to set aside acquisitions for small business concerns **does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, SDVOSB Program, or WOSB Program.**
- (c) **Above SAT: CO shall first consider an acquisition for the small business socioeconomic contracting programs before considering a small business set-aside (see [19.502-2\(b\)](#)).**
(Exception: 8(a) contracts)
- (d) **In determining which socioeconomic program to use for an acquisition, the contracting officer should consider, at a minimum-**
 - (1) **Results of market research that was done to determine if there are socioeconomic firms capable of satisfying the agency's requirement; and**
 - (2) **Agency progress in fulfilling its small business goals.**
- (c) **SBSAs have priority over acquisitions using F&O.** See requirements for establishing a small business set-aside at subpart [19.5](#).

Market Research and Small Business

Procurement Center Representatives (PCR)

- Advocate on behalf of SBs
- Mediate SB Issues
- Work closely with contracting staff at Federal buying offices
 - Communicate with Agency on upcoming requirements
 - Review acquisitions and solicitations (including set aside decisions)
 - Inform agencies on updates to SB regulations, changes in SBA certification programs
 - Assist agencies in meeting their SB goals through training, counseling & technical assistance
 - Review/approve Subcontracting Plans at time of award.
 - Receive copies of Cure/Show Cause notices of SB firms headquartered in the PCRs territory. Contacts firm to offer assistance if needed
 - Review buying office SB policies & procedures
- Train other agencies, Resource Partner staff and Vendors

Market Research and Small Business

Working with the PCR

- Provide training about the various SB programs and agency goals
- Assist with Limitations on Subcontracting, Non-Manufacturer Rule and provide info on the Disputes process
- Look into why an agency didn't set aside a specific opportunity for SB
- Provide agency SB Liaison/SB Specialist contacts if a firm is procurement-ready
- Provide suggestions on marketing to agencies or primes, or contract vehicles to consider (GSA, IDIQs, BPAs, etc.)

Therefore, we have connections to SBs that may be valuable to you!

Market Research and Small Business

Supporting Documentation

- Submit form with CURRENT market research documentation (results of DSBS searches, summary of Sources Sought responses, etc.) ***Please show your work!***
- Include fully signed/executed J&As or D&Fs (no drafts or unsigned docs), if applicable (**FAR 6.302, 8.405-6, or 16.505**).
- **Assure the documentation fully and clearly support the recommend procurement strategy to an outsider!**

Market Research and Small Business

Supporting Documentation, continued...

- No editorializing:
 - “8(a) costs too much.”
 - “The firm’s location is too far.”
 - “We do not want small business to lose money.”
 - “There are 20 8(a)s and 20 HZs, and 10 SDVOSBs but none can do it.”
 - “We want F&O for maximum competition.”
- Use facts. **The regulations prioritize SB utilization.** Can small business perform, or can it not perform?

MR Example Details

Market research should include findings and facts, so that an outsider will clearly see why you recommended F&O, SBSA or one of the Socio-Economic programs. If there is an internal audit or SBA Surveillance Review can the reviewer follow your logic with the info provided?

“A Sources Sought was issued on 1/5/22 and closed 15 days later. **Copy attached.** Fifteen firms responded, 10 of which were Small Businesses and 5 LBs. Of the 10 SBs, only 7 had the required industry certification described in the Sources Sought for this work. Of these 7 SB firms, 3 were SBs without any socio-economic status, 3 were SDBs, 2 were WOSBs, and 2 were SDVOSBs. All 7 indicated positive, recent and relevant past performance. **See attached analysis of 15 respondents.** Per FAR 19.203(c), set asides for SDB, WOSB and SDVOSB were considered before a SBSA. Our current SB achievements for the socio-economic goals were reviewed with the Small Business Specialist. The goal we are most challenged in at this time is SDVOSB, therefore an SDVOSB set aside is recommended.”

GAO Guidance

Bid Protest Decision B-406256

- There is a high degree of subjectivity and discretion as to what constitutes the appropriate level of complexity of market research for a particular requirement.
- One way to assess the appropriateness of market research is to examine how the Government Accountability Office (GAO) has ruled in pertinent protests.
- One such protest is [GAO case number B-406256](#), in which GAO reviewed a protest challenging a decision to not set-aside a requirement exclusively for small business concerns.

GAO Guidance

Bid Protest Decision B-406256

- USDA had a requirement for fresh fruits and vegetables for schools in Florida and Michigan initially then nationwide.
- Protestor argued that there was a reasonable expectation that the agency would receive offers from two or more small businesses at a fair and reasonable price.
- Agency contends they conducted adequate market research:
 - Published information on the requirement (RFI)
 - 8 months of meetings and teleconferences with industry partners
 - Agency asserted that, along with market research, its knowledge and experience led them to believe that small business concerns are not capable of meeting the requirement.
 - Agency argued that currently the requirement was being met by large business and a set-aside would be too restrictive.

GAO Guidance

Bid Protest Decision B-406256

- GAO generally does not disturb a CO's discretion in making a business judgment.
- However, CO must make reasonable efforts to ascertain whether it is likely that offers will be received from at least two small businesses capable of meeting the requirement.
- Has the CO made a reasonable effort in this case?

GAO Guidance

Bid Protest Decision B-406256

- GAO sustained the protest!
- GAO stated that although it does not disturb a matter of business judgment within the CO's discretion, it found unreasonable a determination to issue a solicitation on an unrestricted basis where the determination is based upon outdated or incomplete information. Additionally, GAO states that the “assessment must be based on sufficient facts so as to establish its reasonableness.”
- The record reviewed by GAO lacked an analysis of the facts.
- Agencies assertion was based on assumptions.

Tolliver Case

IDIQ Contracts vs Set-Asides

CASE FACTS

- Army set-aside a FAR part 16 TO for SDVOSB.
- Army decides to later pivot to another IDIQ and not set-aside.
- Two SDVOSB protested Army's decision.
- Judge has ruled that “rule-of-two” applies to part 16 IDIQ at contract and order level.

Tolliver Case Impact

IDIQ Contracts vs Set-Asides

- **OFPP Memo for Chief Acquisition Officers** - signed by Christine Harada, Senior Advisor (Jan. 25, 2024), Increasing Small Business Participation on MACs
 - Engage agency small business specialists earlier in the acquisition process for all MAC strategies.
 - Consider on-ramps when developing the acquisition strategy.
 - Because SBA's regs allow a firm to remain a small business throughout contract performance (unless recertification) if it grows to exceed the applicable size standard, discourage off-ramps except if merger or acquisition.
 - Generally, **apply the rule of two to contract orders**; but not applying it before a contract vehicle selected. Once a vehicle selected, then apply the Rule of Two. (there are exceptions to be aware of)
 - Maximize orders to small business under the simplified acquisition threshold (SAT).
 - Best in Class: Agencies should actively seek new entrants – but that may be difficult since best in class contractors are usually established business concerns
- **SBA** has started drafting a proposed rule to implement the Rule of Two on MACs.

Practical Suggestions for Success

- Strategic MR should be done on a continuous basis at the program level.
- Tactical MR should commence once requirements are final or near final . If requirements change, you may have to repeat efforts.
- Be mindful of overly cumbersome request in RFI's or Sources Sought Notices. Brief capability statements along with relevant past performance references should suffice.
- The question of currency of the MR is done on a case-by-case basis. You must address this issue especially when citing acquisition history as a MR method.
- Ability to meet delivery schedule is often ignored as factors in MR analysis. Focus tends to be on performance and price only.

Things to consider

- Was a set aside done last time? (history)
- Is there additional market info elsewhere in the agency? (technical staff)
- Is there additional market research outside of the agency? (another agency, federal or local?)
- Do we need more info about what we are buying? (RFI)
- We know what we need but don't know who can perform. (Sources Sought)
- Check the SBA Dynamic Small Business Search database
- Doing outreach to small business community? (Industry days, meet the buyer events, site visits?)

Recap

- Market Research is a continuous process.
- Market Research is a team effort usually initiated by the program office.
- Scope and complexity should drive the level of market research conducted.
- Market research should be documented in the form of a market research report for requirements above \$250,000.
- Contracting Officer is responsible for the proper documentation of MR in the contract file.
- Collect, Analyze and Document!

Discussion and Q&A

Thank you!